IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RFA No.236 of 2007.
Date of decision: 04.12.2007.

Union of India **….Appellant**

Versus

Rattan Chand & Others **….Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellant:	**Mr.Ravinder Thakur, Central Government Counsel.**
For Respondents 1: 3, 4 and 6:	**None.**
For Respondents 2 & 5:	**Mr.Sunil Mohan Goel, Advocate.**
For Respondent 7:	**Mr.Rajan Dewan, Additional Advocate General.**

Dev Darshan Sud,J.

This appeal has been preferred by the Union of India against the judgment dated 24.3.2005 passed by the learned Additional District Judge, Fast-Track Court, Kullu, in Reference Petition No.46 of 2002, RBT No.43/2004./1/05.

The appeal was barred by time and application under Section 5 of the Limitation Act, 1963 for condonation of delay being CMP(M) No.184 of 2006 was filed by the appellant with a prayer that the

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

delay in filing the appeal be condoned in the interest of justice. Notices of this application were issued to the respondents. It was reported by the Process Serving Agency that respondents No.1, 3, 4 and 6 are dead. The report on the summons discloses that respondent No.1, Rattan Chand, had died about 10 years ago, respondent No.3, Smt.Heti, and had expired about 6 years ago. Admittedly, the matter was taken up for consideration by the learned Reference Court on 12.7.2002 and decided on 4.3.2005. The two of the respondents-claimants having died in the year 1996 and 2000, it is intriguing as to how an award was made in their favour.

Learned counsel appearing for the appellant submits that the Reference Petition should be declared to have been abated as no further proof is required to show that the parties to the Reference Petition are dead and adequate steps in accordance with law had not been taken by them before the Reference Court.

I have heard learned counsel for the parties.

The reports, on the summons issued to the respondents, prima facie show that they were not alive on the date when the Reference Petition was instituted or the death occurred immediately after the institution of the case before the Reference Court.

In ***CMP(M) No.587 of 2005,*** titled as ***Collector, Land Acquisition Vs. Khewa Ram and Others,*** decided on

9.1.2007, this Court has held that where there are more than one petitioner-claimant, the proceedings will not abate. However, in the present case the question to be determined is as to whether the reference was competent to have been instituted on behalf of a person who was already dead before the Reference Court was seized of the matter.

In the circumstances, the matter is remanded to the learned District Judge, Kullu, who will determine (i) which of the respondents was dead at the time when the reference was filed; (ii) whether the Reference Petition was validly instituted and whether the death of the respondents resulted in the abatement of the petition or not.

Copy of the judgment passed in ***CMP(M) No.587 of 2005,*** titled as ***Collector, Land Acquisition Vs. Khewa Ram and Others*** be also forwarded to the learned Additional District Judge, Fast Track, Kullu.

Parties through their learned consel are directed to appear before the learned trial Court on ***10.1.2008***. This petition is accordingly disposed of. There shall be no order as to costs. All the miscellaneous applications are disposed of.

December 4, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**